



California Regional Water Quality Control Board

San Diego Region

Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
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9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

October 21, 2009

Robert Van Ommering
14950 El Monte Road
Lakeside, CA 92040

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

7099 3400 0015 9997 1245

In reply refer to:

CRU: 9 000000196: KSchwall

Dear Mr. Van Ommering :

**SUBJECT: TENTATIVE ORDER NO. R9-2009-0165; AN ORDER RESCINDING
ORDER NO. R9-2004-0065, NPDES NO. CA0109207, WASTE
DISCHARGE REQUIREMENTS FOR VAN OMMERING DAIRY, SAN
DIEGO COUNTY**

The federal court of appeals recently made a ruling that dairy operations such as yours no longer need to be regulated under a National Pollutant Discharge Elimination System (NPDES) permit, which regulates discharges to surface waters. Your dairy is currently regulated under NPDES Order No. R9-2004-0065. Even though the dairy does not require an NPDES permit, wastes generated at your dairy still pose a threat to ground water quality. Thus, your NPDES permit Order No. R9-2004-0065 is being rescinded and the dairy will be regulated under General Order No. R9-2008-0130, *Waste Discharge Requirements for Existing Dairy Animal Feeding Operations in the San Diego Region* (copy enclosed).

Enclosed is a copy of Tentative Order No. R9-2009-0165 which if adopted by the Regional Board would rescind NPDES permit requirements for your dairy operation as contained in Order No. R9-2004-0065, NPDES No. CA0109207 consistent with the recent court ruling. Regional Board staff plans to present Tentative Order No. R9-2009-0165 to the Regional Board for their consideration and adoption at their regularly scheduled meeting on November 18, 2009. This proposed action is based on our understanding that there is no discharge of pollutants to surface waters from your dairy operation.

BACKGROUND

In 2003, the United States Environmental Protection Agency (USEPA) published revisions to its Clean Water Act regulations governing waste discharges to surface waters from concentrated animal feeding operations (CAFOs). Pursuant to these regulations your dairy operation was classified as a concentrated animal feeding operation (CAFO) and you were required to apply for and comply with a National Pollutant Discharge Elimination System (NPDES) permit. The US Court of Appeals,

California Environmental Protection Agency

Second Circuit recently issued a ruling providing that only a person who "discharges or proposes to discharge pollutants" to waters of the United States (i.e. surface waters) needs to apply for and comply with an NPDES permit. Our review of this ruling indicates that your dairy operation is no longer subject to the need for regulation under NPDES permit because we understand that there is no waste discharge to surface waters from your dairy operation.

WASTE DISCHARGE REQUIREMENTS

Waste discharges associated with your dairy operation still have the potential to affect the quality of the waters (i.e. ground water) of the State. Pursuant to Division 7 of the California Water Code, the Regional Board will be regulating the Van Ommering Dairy under General Order No. R9-2008-0130, *Waste Discharge Requirements for Existing Dairy Animal Feeding Operations in the San Diego Region* (copy enclosed and available at

http://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2008/r9_2008_0130.pdf). Your facility is automatically enrolled under this General Order upon rescission of your NPDES Permit. Please check Table 2 of Finding 6 of General Order R9-2008-0130 to ensure that the Maximum Milking Herd Size is correct. If the Maximum Milking Herd Size is not correct, please submit a new, complete application by submitting the form in Attachment B of General Order R9-2008-0130, a waste management plan, and a site map.

There are some significant advantages in transferring regulation of your dairy from NPDES permit to the general state waste discharge requirements (WDRs).

Advantages to obtaining WDRs include:

- A reduction in the number of applications you will need to submit. NPDES permits expire every 5 years and require reapplication and reissuance. Waste discharge requirements do not expire, but are periodically updated.
- Reduced monitoring requirements. The General WDRs require analysis of fewer constituents for the ground water samples.
- No comprehensive detailed nutrient management plan. USEPA, in 40 CFR 122.23, requires the implementation of a nutrient management plan when a dairy is regulated under an NPDES permit. The General WDRs do not require USEPA's nutrient management plan.

NO POTENTIAL TO DISCHARGE TO SURFACE WATERS CERTIFICATION FORM

You have already submitted a *No Potential to Discharge to Surface Water Determination Request* form. No further action on your part is necessary to proceed with the rescission of your NPDES Permit.

NOVEMBER 18, 2009 BOARD MEETING

The November 18, 2009 Board meeting will begin promptly at 9:00 a.m. and will be held at the following location:

California Environmental Protection Agency

Water Quality Control Board
Regional Board Meeting Room
9174 Sky Park Court
San Diego, California

Please review and comment on the tentative order at your earliest convenience. It is recommended that written comments be submitted as soon as possible to enable staff to amend the tentative order, if necessary, and allow changes to the tentative order to be fully reviewed by the Regional Board and interested parties.

The public comment period will remain open until the Regional Board takes action on November 18, 2009. However, to ensure that the Regional Board has the opportunity to fully study and consider written material, comments should be received by the Regional Board no later than 5:00 p.m. on Tuesday, November 3, 2009. The final deadline for submittal of written comments, however, is Tuesday, **November 10, 2009.**

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence, please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

If you have any questions or comments, please contact Kristin Schwall at (858) 467-2345 or via email at kschwall@waterboards.ca.gov.

Respectfully,



David T. Barker
Supervising Engineer

DTB:bdk:ks

- Enclosures: 1) Tentative Order No. R9-2009-0165, *An Order Rescinding Order No. R9-2004-0065, NPDES No. CA0109207 Waste Discharge Requirements, for Van Ommering Dairy, San Diego County*
2) General Order No. R9-2008-0130, *Waste Discharge Requirements for Existing Dairy Animal Feeding Operations in the San Diego Region*

cc: Kate Rao, USEPA Region 9 (via e-mail)
Dave Smith, USEPA Region 9 (via e-mail)

